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DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-819]

Magnesium Metal from the Russian Federation: Notice of Reinstated Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On July 27, 2012, the United States Court of Appeals for the Federal Circuit (CAFC) reversed and remanded a decision of the United States Court of International Trade (CIT) and ordered it to reinstate the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation covering the period April 1, 2006, through March 31, 2007, as applied to PSC VSMPO-AVISMA Corporation (VSMPO-AVISMA). *See PSC VSMPO-AVISMA Corp. v. United States*, 688 F.3d 751 (Fed. Cir. 2012) (*AVISMA IV*); *see also Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 73 FR 52642 (September 10, 2008) (*Final Results*). On November 20, 2012, the CIT issued final judgment pursuant to the CAFC's remand order in *AVISMA IV* reinstating the final results of administrative review with respect to VSMPO-AVISMA. *See PSC VSMPO-AVISMA Corp. v. United States*, Consol. Court No 08–00321, Slip Op. 12–142 (Ct. Int'l Trade November 20, 2012) (*AVISMA V*). Having previously amended the final results of administrative review pursuant to the earlier CIT decision, the Department of Commerce (the Department) is, in accordance with *AVISMA V*, once again amending the final results of the administrative review with respect to VSMPO–AVISMA to reinstate its original determination. *See Final Results*.

EFFECTIVE DATE: March 11, 2011

FOR FURTHER INFORMATION: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2008, the Department published the final results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review April 1, 2006, through March 31, 2007. *See Final Results*. In the *Final Results* the Department determined that it was appropriate to treat raw magnesium and chlorine gas manufactured by VSMPO-AVISMA as co-products and to employ a net-realizable-value (NRV) analysis to allocate joint costs incurred up to the split-off point where raw magnesium and chlorine gas become separately identifiable products. The Department calculated a weighted-average dumping margin for AVISMA of 15.77 percent for the period April 1, 2006, through March 31, 2007. *See Final Results*, 73 FR at 52643.

The CIT remanded the *Final Results* to the Department to take into account an affidavit from Dr. George Foster, an accounting professor (the Foster Affidavit), when considering the best methodology for calculating the NRV for the chlorine gas.¹ *See PSC VSMPO-AVISMA Corp. v. United States*, Consol. Court No 08–00321, Slip Op. 09-120 (Ct. Int’l Trade October 20, 2009) (*AVISMA I*). In accordance with the CIT’s order in *AVISMA I*, the Department admitted the Foster Affidavit into the record, considered the arguments of Dr. Foster upon remand, and, as

¹ VSMPO-AVISMA submitted the Foster Affidavit as part of its administrative case brief, dated June 11, 2008, which the Department rejected as untimely new factual information.

a result of that consideration, determined not to recalculate the dumping margin for VSMPO-AVISMA upon concluding that Dr. Foster's proposed methodology was not appropriate to use in this case. *See* Results of Redetermination Pursuant to Remand, dated March 30, 2010 (*First Remand*) (available at <http://ia.ita.doc.gov/remands>). As a result, in the *First Remand* the Department used the same allocation methodology it used in the *Final Results*.

In *PSC VSMPO-AVISMA Corp. v. United States*, 724 F. Supp. 2d 1308 (Ct. Int'l Trade 2010) (*AVISMA II*), the CIT remanded the *Final Results* again, instructing the Department to consider VSMPO-AVISMA's entire production process, including titanium production, in allocating joint costs to the subject merchandise. The CIT found the Department's cost-allocation methodology in the *Final Results* to be unsupported by substantial record evidence and not in accordance with section 773(e)(1) of the Tariff Act of 1930, as amended (the Act). *See AVISMA II*, 724 F. Supp. 2d at 1313-16. In accordance with the CIT's order in *AVISMA II*, and under respectful protest, the Department reexamined its calculation methodology to take VSMPO-AVISMA's entire production process into account, including the stages of production encompassing and following ilmenite catalyzation, and, based on that examination, the Department recalculated the weighted-average dumping margin for VSMPO-AVISMA. *See* Results of Redetermination Pursuant to Remand, dated November 22, 2010 (*Second Remand*) (available at <http://ia.ita.doc.gov/remands>). As a result of the Department's recalculations, the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation became 8.51 percent for VSMPO-AVISMA. *See Second Remand*. The CIT sustained the Department's *Second Remand* on March 1, 2011. *See PSC VSMPO-AVISMA Corp. v. United States*, Consol. Court No 08-00321, Slip Op. 11-22 (Ct. Int'l Trade March 1, 2011) (*AVISMA III*).

On March 11, 2011, consistent with *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010), and pursuant to section 516A(c) of the Act, the Department notified the public that the final CIT judgment in *AVISMA III* was not in harmony with the Department's final determination and amended the final results of the administrative review with respect to VSMPO-AVISMA to reflect the final CIT judgment in *AVISMA III*. See *Magnesium Metal from the Russian Federation: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision*, 76 FR 13355 (March 11, 2011).

On July 27, 2012, the CAFC reversed and remanded the decision of the CIT and ordered it to reinstate the final results of the administrative review as applied to VSMPO-AVISMA. See *AVISMA IV*, 688 F.3d at 765. In *AVISMA IV*, the CAFC found that the CIT infringed upon the Department's authority to implement and enforce proper procedures for constructing an agency record in its proceedings by requiring the Department to consider the untimely submitted Foster Affidavit. See *id.* at 761-62. Further, in *AVISMA IV*, the CAFC found that the CIT erred in its interpretation of section 773(e)(1) of the Act by mandating the Department to adopt the facility-wise cost allocation methodology and that the Department's choice of accounting methodology in the *Final Results* was supported by substantial record evidence and in accordance with law. See *id.* at 762-65. On November 20, 2012, the CIT issued final judgment implementing the CAFC's remand order in *AVISMA IV* and ordering reinstatement of the *Final Results*. See *AVISMA V*. Reinstatement of Final Results

Because *AVISMA V* is a final court decision with respect to VSMPO-AVISMA, the Department is amending the final results of administrative review by reinstating the weighted-average dumping margin established in the *Final Results* for VSMPO-AVISMA. Accordingly,

the weighted-average dumping margin for the period April 1, 2006, through March 31, 2007, for magnesium metal from the Russian Federation is 15.77 percent for VSMPO-AVISMA. *See Final Results*, 73 FR at 52643. The Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise manufactured and exported during the POR by VSMPO-AVISMA using the assessment rates calculated by the Department in the *Final Results*. *See id.*

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

December 5, 2012 _____
Date

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